

23 February 1971

MEMORANDUM FOR THE RECORD

SUBJECT: A Bill "To Amend Title 5, United States Code to Establish and Govern the Federal Executive Service and for Other Purposes"

1. The Administration has submitted to Congress a draft bill establishing a Federal Executive Service for super grades GS-16 through GS-18. The bill has not yet been formally introduced and is not numbered; however, a copy of the bill in an Administration package, which included a section analysis and a background discussion, were secured from House Post Office Committee. A review of this material reflects the following.
2. Super grades GS-16 through GS-18 as part of the present competitive system are abolished. A contractual program on a three-year renewable basis without regard to specified positions is established. The CSC is made sole authority to oversee and direct the program which provides appeal mechanisms for aggrieved employees to the CSC. The rather unique and perhaps most noteworthy feature is the extension of the program to those agencies within the Executive which are not now under the competitive service; and clearly outside of the Executive to the Judicial and Legislative. In regard to Judicial and Legislative, a program must be established which is as nearly like the program prescribed for the Federal Executive Service as conditions "of good administration warrant." This should be borne in mind when considering the scope of implementation within Government which the administration contemplates.
3. In Section 3132 certain listed agencies are exempt including CIA, AEC, and the FBI. However, these agencies, under Section 3143 (d) are "...encouraged to adopt such features of the program... as conditions

of good administration warrant;" and are "entitled, on request to receive advice and assistance from the Civil Service Commission...."

4. The Administration presumes such a broad adoption of the FES program, either mandatorily under the bill or by election and adoption of similar programs by agencies otherwise exempt, that the present laws in Title 5 are amended or repealed. This includes the following significant changes:

a. Sections 5304, 5332, 5361, 5362, 5363 - Pay Rates and Systems - Amended to strike GS grades 16 through 18 including 5332, The General Schedule.

b. Sections 5102, 5104, 5108, 5109, 5114 - Classification Act - Amended to strike all reference to GS grades 16 through 18.

5. Section 3139 of the bill provides a formula for the pay of FES executives which is not to be less than the sixth step of a GS-15 or more than level V. The average rate, however, of all executives may not exceed the executive pay average authorized by the Civil Service Commission in collaboration with the Office of Management and Budget. Under Section 3134, the total number of FES executives must be negotiated with and approved by the CSC and OMB. Section 2(b)(3)(A) sets forth the present annual salaries of super grades 16 through 18 which is the grade schedule to be used for those employees in positions which are not brought under the FES. Section 3(a)(1) provides that each position paid at a rate of GS 16, 17, or 18, or if pay was fixed by administrative action in these grades, is authorized to be paid under Section 2(b) above. This is to constitute "...the only authority for continuing a position... (and) all authorities for those positions that existed immediately before the effective date of this Act are repealed...."

6. The effectiveness of the exemption granted to CIA at this point becomes somewhat confusing. As previously mentioned, Section 3132 of the bill granted the FBI an exclusion together with CIA and AEC. Section 2 of the bill is described by the CSC as a transition section which would be the enabling authority for super grades outside of the FES. All employees, including excepted service, are covered. Herein, however, Section 2(b)(2)(B) grants FBI a special authority to fix the pay of 140 positions by administrative

determination without regard to any other provisions of the Act. This would make the FBI the only Agency of Government acting under such specific authority since all existing authority in present Section 5108 of Title 5 would be repealed. This would also constitute an increase for the FBI of 30 positions from the present 110 positions under Section 5108. The background of this entry is not known; however, it is clear that the FBI has determined to remain outside FES. The FBI is also expressly exempt under Section 3 (a)(2) which repealed all prior authorities for grades 16 through 18 and requires that "Each agency in the Executive, Judicial, or Legislative branch shall make a report to the Civil Service Commission at such time and in such form as the Commission prescribes," concerning each position which has not been brought into the Federal Executive Service or a similar program. This must include a statement of the authority that existed for each such position immediately before the effective date of enactment of the proposed bill. By construction, it is apparent that the exemption of the CIA does not avoid the reporting requirement of Section 3 (b). This is contrary to Section 6 of the CIA Act of 1949 which exempts the Agency from the provision of any other law which requires the publication or disclosure of the organization, functions, titles, salaries, or numbers of personnel employed.

7. The exemption of CIA in Section 3132 does not, it is felt, constitute an absolute exclusion from the application of the bill. The intent of the drafters was to eventually have all agencies included in the FES or a similar program. The apparent exception is the FBI, which is the only agency granted a special allocation of super grade positions and is effectively exempted. The same reasons that exclude the CIA from the competitive career service would exclude it from the FES. Since the exemption in the present bill is ambiguous and, in effect, merely grants a latitude to adopt a similar program, there should be a clear statement which would grant CIA a blanket exemption. CIA is expressly exempted from the Classification Act of 1949. The authority of the Director to establish positions and rates of pay is Section 8 of the CIA Act of 1949. This can continue to authorize a super grade structure.

8. The only possible consideration would be the effect of complete CIA exclusion from the FES program since the Agency does model as much as possible its positions and classifications after the Classification

Act and career civil service. The authority seems clear for the Director to establish a similar program internally if there is adoption of the FES program throughout Government, and it is highly effective for senior management. Such a program would, however, be structured within CIA limitations and be clearly outside of the FES STATINTL itself in all respects.



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